

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SERGIO L. SHAW,

Plaintiff,

v.

THOMAS JAHNKE, Dodge
Correctional Officer,

Defendant.

ORDER

08-cv-245-bbc

In this case plaintiff was allowed to proceed in forma pauperis on his claim that defendant Thomas Jahnke, a correctional officer, used excessive force against him in violation of the Eighth Amendment. On February 27, 2009, defendant filed a motion for summary judgment based on plaintiff's alleged failure to exhaust administrative remedies, and briefing was set on the motion. That same day, the clerk's office mailed notice of the briefing schedule to plaintiff at his last known address, the Columbia Correctional Institution. However, this notice has been returned as undeliverable.

Subsequently, the court has learned that plaintiff now resides at the Wisconsin Resource Center, located at 1505 North Drive, Winnebago, WI 54985. Because defendant

served his motion on plaintiff at the Columbia Correctional Institution address on the same day that the court mailed its briefing schedule that was returned as undeliverable, I will assume that plaintiff did not receive the motion either. Therefore, I will direct defendant to re-serve his motion on plaintiff at his new address no later than March 12, 2009. Plaintiff will have until March 26, 2009, to file a response, and defendant will have until April 2, 2009, to file a reply. Plaintiff should note that on a motion for summary judgment based on the alleged failure of plaintiff to exhaust, the parties are not required to file separate documents containing proposed findings of fact. Accordingly, defendant has filed only a brief and affidavit with attached exhibits. In his response, plaintiff should file a responsive brief and affidavits with attached exhibits relevant to the question whether he exhausted his administrative remedies.

ORDER

IT IS ORDERED that defendant must re-serve his summary judgment motion and supporting materials on plaintiff at the Wisconsin Resource Center no later than March 12, 2009. Plaintiff will have until March 26, 2009, to file a response, and defendant will have

until April 2, 2009, to file a reply.

Entered this 5th day of March, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge